

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11176 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

JATHUBHA D RANA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11176 of 1993
MR PS CHAMPANERI for Petitioner.
Mr. L.R. Poojari, AGP for Respondent No. 1,2-3

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 08/04/2004

ORAL JUDGEMENT

The petitioner, who was Girasdar of Village Untadi, Taluka-Limbdi of District-Surendranagar, had preferred the present Special Civil Application under Article 226 of the Constitution of India for an appropriate writ, direction or order directing the respondents to pay the amount payable to them under the

provisions of Saurashtra Land Reforms Act along with interest at the rate of 16% p.a. till the amount is realised and paid as per statement at Annexure E.

2. This Court had admitted the Special Civil Application on 29.6.1994. However, no affidavit-in-reply has been filed by the respondents to controvert the averments made in the petition and therefore the present petition is decided and disposed of on the basis of averments made in the petition.

3. The petitioner is a Girasdar of village Untadi, Taluka-Limbdi of Surendranagar District defined under the provisions of Saurashtra Land Reforms Act (hereinafter referred to as "the Act"). That it is the case of the petitioner that there were 17 tenants and all the 17 tenants filled-in form No.II under the provisions of the Act and the petitioner also filed an application for obtaining permission for personal cultivation against the tenants in Form No. I under the aforesaid Act. That the said proceedings came to be disposed of in the year 1967 and the petitioner and other Girasdar who were parties to the aforesaid proceedings were given possession of the respective land allotted to them for personal cultivation in 1967. It is the case of petitioner that they were entitled to recover 1 1/2 times assessment as rent under Section 7 of the said Act for the period during which the tenants remained in possession and therefore the Mamlatdar, Limbdi prepared a statement showing the amount of recovery to be recovered from the tenants of Girasdars including the petitioner in respect of 1 & 1/2 times assessment which they were required to be pay to the Girasdars. It seems that the said Patraks/Statements were prepared under Section 32-B(2) of the Act and after verifying the same by the Mamlatdar, the same came to be forwarded to the Dy. Collector and thereafter ultimately to the Collector for necessary orders. On the basis of the aforesaid orders and the statements, the Mamlatdar issued an order dated 26th February 1970 to the Talati-cum-Mantri to recover the amount of 1 & 1/2 times the assessment shown in the order against each tenant. It seems that the Talati-cum-Mantri, on the basis of the aforesaid order, initiated the proceedings to recover the aforesaid amount from the respective tenants. That the respective tenants raised certain objections, but ultimately the Mamlatdar by his order dated 20th February 1971 directed them to pay 1 & 1/2 times the assessment which was in accordance with law. That as according to the tenants there were some discrepancies in the statement of adjustment of accounts they preferred an appeal before the Dy. Collector, Limbdi which was

registered as Miscellaneous Appeal No. 7/1970-71 and the Dy. Collector by his order dated 14th April 1971 dismissed the appeal.

4. Being aggrieved and dissatisfied with the aforesaid order passed by the Dy. Collector, the tenants approached Gujarat Revenue Tribunal by way of Revision Application No. 26/1971 and the said revision application came to be dismissed in the year 1972.

That being aggrieved and dissatisfied with the aforesaid order passed by the Gujarat Revenue Tribunal the tenants filed Special Civil Application No. 873 of 1972 which also came to be dismissed by this Court by judgment and order dated 11th January 1977.

5. It is the case of the petitioner that the petitioner has thereafter approached the Mamlatdar time and again to get the payment which was required to be paid to him pursuant to the order passed by him dated 26th February 1970 as well as 20th February 1971, but no efforts were made by the Mamlatdar to make the aforesaid payment to the petitioner. However, ultimately the petitioner was informed by communication dated 30th April 1990 that the petitioners should give a copy of the order of this Court passed in Special Civil Application No. 873 of 1972. It is pertinent to note here that the statement was already prepared by the Mamlatdar and all the particulars were very much available in the Office of Mamlatdar. It is the case of petitioners that thereafter the petitioner has already given necessary particulars as demanded by the Mamlatdar, still the amount was not paid which was required to be paid under the provisions of the Act after recovering the same from the tenants and therefore the Special Civil Application is filed as stated hereinabove.

6. Though Rule was issued by this Court in 1984, till today no affidavit has been filed to controvert the averments made in the Special Civil Application.

7. When the matter was called out on last occasion, Shri Poojari, ld. AGP was directed to see that some responsible officer from the office of Mamlatdar remain present and the officer who had remained present has informed the Court that as there was Earthquake in the year 2001 the papers are not traceable in their office. It is pertinent to note again that the petitioner is claiming the amount which was required to be paid to him since 1977 and the Earthquake occurred in the year 2001. It seems, prima facie, that no efforts were made by the Office of Mamlatdar to recover the amount which was

required to be paid to the petitioner under the provisions of the said Act for which an order was passed in the year 1970-71. Be that it may, when the Special Civil Application was heard today for final hearing, Shri Champaneri, ld. advocate appearing for the petitioner states that even today he is ready and willing to give all the necessary documents/statements to the respondent authority so as to avoid any further delay. Shri Poojari, ld. AGP appearing on behalf of the State submits on instructions from the Mamlatdar that on furnishing necessary documents/statements by the petitioner necessary steps will be taken to recover the amount from the tenants and in turn to pay the amount to the petitioner Girasdar which is required to be paid to him, within a period of two months from today.

8. In this view of the matter, the petitioner is directed to supply necessary documents/statements with regard to the amount due and payable to the petitioner and also to be recovered from all the tenants within a period of four weeks from today and on receipt of the same the respondents No. 2 and 3 are directed to initiate proceedings for recovery of the amount to be recovered from the tenants of the petitioner and to see to it that the necessary payment which is due and payable to the petitioner is made on or before 30th June 2004. If this direction is not complied with by the respondents No. 2 and 3, then a strict view will be taken and appropriate action may be taken against them for noncompliance of the direction of this Court. At this stage, Shri Champaneri, ld. advocate has rightly submitted that an appropriate direction may also be issued with regard to payment of interest at the rate of 12% p.a. In the facts and circumstances of the case, the respondents are directed to make the payment of the aforesaid amount which is due and payable to the petitioner along with interest at the rate of 7 1/2 per cent, and the respondent No.1 is directed to see that the said amount of interest, which is now required to be paid to the petitioner, is recovered from the erring officers because of whose inaction the present Special Civil Application was required to be filed, and there is a delay in making the payment. For that purpose, the respondent No.1 may hold an appropriate inquiry against the concerned officers.

9. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

